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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/804,729	03/13/2001	Kannan Srinivasan	696.001	2030

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FERENCE & ASSOCIATES
409 BROAD STREET
PITTSBURGH, PA 15143

EXAMINER

NELSON, FREDA ANN

ART UNIT	PAPER NUMBER
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3628

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/16/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/804,729

Applicant(s)

SRINIVASAN ET AL.

Examiner

Freda A. Nelson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The amendment received on October 19, 2006 is acknowledged and entered. Claim 1 has been amended. No claims have been added. Claims 1-16 are currently pending.

Response to Amendments and Arguments

Applicant's arguments filed October 19, 2006 have been fully considered but they are not persuasive.

In response to applicant's arguments that in regards to claim 1, "there is no teaching or suggestion in Herz of a model that reflects real-time market sensitivities of the product through experimentation. In fact, there is no teaching or suggestion in Herz of any type of real-time tracking or computation of information., the examiner respectfully disagrees. Herz et al. discloses records of the information requested and the products purchased by the shopper are incrementally collected during shopping, as is explained below (paragraph [0033]; and the system may amplify the shopper's profile with his or her present goals, as mentioned above, and with any offers that the shopper has recently considered or accepted. For example, if the shopper has just bought ski goggles, the system might select offers of other ski-related equipment that is frequently bought along with ski goggles.

1. Note on interpretation of claim terms Unless a term is given a "clear definition" in the specification (MPEP § 2111.01), the examiner is obligated to give claims their broadest reasonable interpretation, in light of the specification, and consistent with the interpretation that those skilled in the art would reach (MPEP § 2111). An inventor may define specific terms used to describe invention, but must do so "with reasonable clarity, deliberateness, and precision"

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(MPEP § 2111.01.III). A "clear definition" must establish the metes and bounds of the terms. A clear definition must unambiguously establish what is and what is not included. A clear definition is indicated by a section labeled definitions, or by the use of phrases such as "by xxx we mean"; "xxx is defined as"; or "xxx includes, ... but does not include ...".

2. The instant application contains no such clear definition for the phrase "real-time". The specification states in paragraph [0047] that *"Experimentation utilizing the dynamic sampling engine 430 may be repeated periodically to ensure that the optimal price is dynamically optimized to regularly compensate for market changes. Thus, experiments utilizing the dynamic sampling engine 430 may be run monthly, weekly, daily, hourly, or more often, until the experimentation becomes, practically speaking, continuous"*. But that is an example usage, and does not meet the requirements for a "clear definition." In the instant case, the examiner is required to give the term "real-time" its broadest reasonable interpretation, which the examiner judges to be *"the time required for a computer to solve a problem, measured from the time data are fed in to the time a solution is received"*.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As per claim 1, the examiner is unable to determine by the claim language "determining the optimal price for the product or service under experimentation?", what the applicant is claiming.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 1-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Herz et al. (US PG Pub. 2001/0014868).

As per Claim 1, Herz et al. discloses a method comprising:

(a) receiving configuration data from the Internet merchant (paragraphs [0004]-[0005], [0278]); FIG. 1)

(b) running experiments on randomly chosen visitors according to the configuration data to create a model that is able to reflect real-time market sensitivities concerning the product (see Supra paragraph and [0006], [0021], [0033],[0037],[0308]-[0309]);

(c) determining an optimal price using the model acquired in step (b) by electronic manipulation using a processor (see Supra paragraphs, [0236], [0240]-[0241]); and

(d) displaying the optimal price to the Internet merchant (see Id.).

As per Claim 2, Herz et al. further disclose the method, wherein said configuration data includes sampling parameters (see paragraphs [0004]-[0006], [0021]).

As per Claim 3, Herz et al. further disclose the method, where said configuration data includes potential prices that are offered to the sampled population in step (b) (paragraphs [0021], [0236], [0241]).

As per Claim 4, Herz et al. further disclose the method, wherein said configuration data includes whether the sampling is to be performed continuously or at discrete intervals (see Supra paragraphs).

As per Claim 5, Herz et al. further discloses the method, wherein said configuration data includes data for segmenting the population into clusters (paragraphs [0005]-[0006]).

As per Claim 6, Herz et al. further discloses the method, wherein said configuration data includes a minimum threshold for automatically propagating an optimal price (paragraphs [0021], [0236], [0241]).

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As per Claim 7, Herz et al. further discloses the method, wherein said random sampling is performed on the entire population of visitors to the website (paragraphs [0004]-[0006]).

As per Claim 8, Herz et al. further discloses the method, wherein visitors to the website are grouped, and each group is sampled separately (see Id.).

As per Claim 9, Herz et al. further discloses the method, wherein an optimal price is determined for each group (paragraphs [0006], [0021], [0236], [0241]).

As per Claim 10, Herz et al. further discloses the method including updating the website such that a visitor is offered the optimal price determined in step (c) according to the visitor's group (see Id.).

As per Claim 11, Herz et al. further discloses the method, wherein groups are determined based upon prior purchasing behavior (see Supra paragraphs).

As per Claim 12, Herz et al. further discloses the method, wherein groups are determined based upon demographic characteristics (paragraphs [0005]-[0006]).

As per Claim 13, Herz et al. further discloses the method, wherein step (c) comprises determining a price that optimizes profit (paragraphs [0236], [0241]).

As per Claim 14, Herz et al. further discloses the method including: automatically updating the website to use the optimal price determined in step (c) (see Id.).

As per Claim 15, Herz et al. further disclose the method including: automatically updating the website to use the optimal price determined in step (c) if the optimal price meets a minimum threshold (see Id.).

As per Claim 16, Herz et al. further discloses the method, wherein the minimum threshold is that the optimal price determined in step (c) is a predetermined percentage better than a currently offered price for the product (paragraphs [0005]- [0006], [0021], [0236], [0241]).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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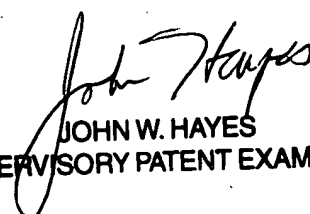
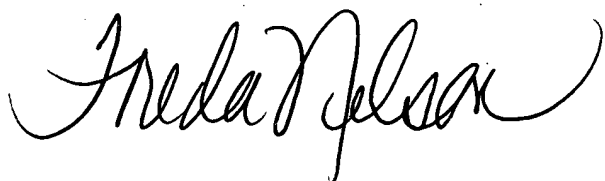
shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Freda A. Nelson whose telephone number is (571) 272-7076. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

FAN 01/08/07



JOHN W. HAYES
SUPERVISORY PATENT EXAMINER